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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 158

JESSE C. BADER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

JOHN E. CASSIDY,
Attorney General of Illinois.

A. B. DENNIS,
Assistant Attorney General.



INDEX.

Subject Index.

	Page
Statement opposing jurisdiction	1
Motion to dismiss	4

Table of Cases Cited.

Patton v. *United States*, 281 U. S. 276	2
People v. *Fisher*, 340 Ill. 250	2

Statutes Cited.

Constitution of Illinois, Article II:	
Section 5	1
Section 9	2
Constitution of the United States, 14th Amendment	2



SUPREME COURT OF THE UNITED STATES

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No. 158

JESSE C. BADER,

Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

STATEMENT DISCLOSING MATTER OR GROUNDS MAKING AGAINST THE JURISDICTION OF THIS COURT ASSERTED BY THE APPELLANT AND MOTION BY APPELLEE TO DISMISS APPEAL.

The grounds upon which appellant contends this Court has jurisdiction of this case are based upon the fact that the appellant waived a trial by jury in the Criminal Court of Cook County and was tried by the court without a jury.

Counsel for appellant contends that this was in violation of Section 5 of Article II of the Constitution of Illinois, which provides:

> "The right of trial by jury as heretofore enjoyed shall remain inviolate."

Counsel for appellant also contends that this was in violation of Section 9 of Article II of the Constitution of Illinois, which provides, among other things, that:

> "In all criminal prosecutions the accused shall have the right to * * * a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

Counsel for appellant further contends that the trial of appellant by the court, without a jury, was the denial of the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States, which provides, in part, as follows:

> "* * * nor shall any state deprive any person of life, liberty or property, without due process of law, * * *."

These contentions of counsel for appellant are unsound and untenable for the reason that the Supreme Court of the State of Illinois, in the case of *People* v. *Fisher*, 340 Ill. 250, at page 265, held:

> "* * * that the defendant in a criminal prosecution, whether the charge be a felony or a misdemeanor, has the power, upon a plea of not guilty, to waive a jury trial; and we do not adhere to what was said to the contrary in the cases of *Harris* v. *People, supra; Morgan* v. *People, supra; Brewster* v. *People, supra; Paulsen* v. *People, supra.*"

This case was very largely predicated upon the case of *Patton* v. *United States*, 281 U. S. 276. In this case, the Supreme Court of the United States said, at pages 296, 297:

> "The record of English and colonial jurisprudence antedating the constitution will be searched in vain for evidence that trial by jury in criminal cases was regarded as a part of the structure of government, as

distinguished from a right or privilege of the accused. On the contrary, it uniformly was regarded as a valuable privilege bestowed upon the person accused of crime for the purpose of safeguarding him against the oppressive power of the king and the arbitrary or partial judgment of the court. Thus Blackstone, who held trial by jury both in civil and criminal cases in such esteem that he called it 'the glory of the English law,' nevertheless looked upon it as a 'privilege,' albeit 'the most transcendent privilege which any subject can enjoy,' Book 3, p. 379. And Judge Story, writing at a time when the adoption of the constitution was still in the memory of men then living, speaking of trial by jury in criminal cases said: 'When our more immediate ancestors removed to America, they brought this great *privilege* with them, as their birthright and inheritance, as a part of that admirable common law which had fenced round and interposed barriers on every side against the approaches of arbitrary power. It is now incorporated into all our State constitutions as a fundamental *right*, and the Constitution of the United States would have been justly obnoxious to the most conclusive objection if it had not recognized and confirmed it in the most solemn terms.' (2 Story on the Constitution, sec. 1779.) In the light of the foregoing it is reasonable to conclude that the framers of the constitution simply were intent upon preserving the right of trial by jury primarily for the protection of the accused. If not, and their intention went beyond this and included the purpose of establishing the jury for the trial of crimes as an integral and inseparable part of the court, instead of one of its instrumentalities, it is strange that nothing to that effect appears in contemporaneous literature or in any of the debates or innumerable discussions of the time. This is all the more remarkable when we recall the minute scrutiny to which every provision of the proposed constitution was subjected. The reasonable inference is that the concern of the framers of the constitution was to make clear that the right of trial by jury should remain inviolable, to which end no language was deemed too imperative. That

this was the purpose of the third article is rendered highly probable by a consideration of the form of expression used in the sixth amendment."

From these authorities it seems clear that there was no denial of due process of law in this case and that this Court has no jurisdiction in the matter. The People of the State of Illinois, appellee, therefore move the Court to dismiss the appeal in this case for want of jurisdiction.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS,
Appellee,

By JOHN E. CASSIDY,
Attorney General of the State of Illinois.

A. B. DENNIS,
Assistant Attorney General,
Of Counsel